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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/883,098

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Douglas Allyn Miller

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CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

SHELEHEDA, JAMES R

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/883,098

Applicant(s)

MILLER, DOUGLAS ALLYN

Examiner

James Sheleheda

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


VIVEK SRIVASTAVA
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: On pages 5 and 6 of applicant's response, applicant argues that Zigmond does not disclose "swapping the first advertisement with a second advertisement if a subscriber has elected to receive substitute advertisement services."

In response, as indicated in the previous action, Zigmond explicitly discloses providing the subscriber with a choice as to whether advertisements are provided or whether the targeted ad system is utilized (see Zigmond at column 14, lines 25-35). As the subscriber has clearly elected as to whether advertisements are received (and swapped) or not received, Zigmond clearly meets the broad claim limitation of "swapping of the first advertisement with a second advertisement if a subscriber has elected to receive substitute advertisement services." As the subscriber has specifically elected to receive targeted advertisements (as opposed to removing all ads), the subscriber has elected to have the advertisements swapped (which is a basic function of the targeted ad system). While applicant is correct that Zigmond does not provide the subscriber with a choice of receiving the original ads or the targeted swapped ads, that is not currently recited in or required by any of the claims.

In response to applicant's arguments on page 8, against the references individually in regards to the link information, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Hite was relied upon to teach swapping a first advertisement with a second advertisement (column 7, lines 15-32). Bendinelli was simply relied upon to teach the use of link information associated with advertisements (see Bendinelli at column 3, lines 19-24). It is the combination of Hite and Bendinelli which teaches replacing the link information associated with the first advertisement with link information associated with the second advertisement (wherein an advertisement containing link information, as taught by Bendinelli is replaced with a second advertisement, as taught by Hite). The combination provided by Hite and Bendinelli, of swapping a first ad with link information with a second ad with link information clearly meets the claim limitations.

In regards to applicants arguments on pages 9-14, directed towards claims 15-18, 19-21, 22-26, 27-28, 29-31 and 32, see above.

In regards to applicant's arguments in regards to claim 33, see above and the previous action where it is clearly indicated that it is the combination of Hite and Bendinelli which teach the replacing of link information. Hinderk was solely relied upon to disclose wherein ad swapping is performed at a broadcast center and the benefits therein.

In regards to applicant's arguments in regards to claim 34, see above and the previous action where it is clearly indicated that it is the combination of Hite and Bendinelli which teach the replacing of link information..



VIVEK SRIVASTAVA
PRIMARY EXAMINER